

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
A La Carte and Themed Programming	)	MB Docket No. 04-207
and Pricing Options for Programming	)	
Distribution on Cable Television and	)	
Direct Broadcast Satellite Systems	)	

**SUPPLEMENTAL COMMENTS OF TV ONE**

TV One hereby submits Supplemental Comments in response to the Media Bureau's Public Notice in the above-captioned proceeding. TV One, which launched on Martin Luther King Jr.'s birthday in January of 2004, is a contemporary cable network that features a broad range of lifestyle and entertainment programming designed, primarily, to entertain, inform and inspire a diverse audience of African American adults. The network is uniquely qualified to comment on the dangers that an a la carte regime poses to start-up networks, networks catering to minority audiences and program diversity in general.

The Media Bureau's Notice asks "what effect, if any, would the voluntary offering of a la carte or themed-tier service have on the ability of independent, niche, religious, and ethnic programming to continue to be carried or launched?" An a la carte requirement would have a devastating effect on the continued viability of these services and would likely sound the death knell for many new service offerings. Attached is a declaration of Larry Gerbrandt, an expert media analyst, who examines these issues. Mr. Gerbrandt concludes that "a la carte legislation and regulation would silence many of the very voices of diversity and unique interest which are heard only because of cable and satellite's flexible packaging and tiering offerings."

A requirement to offer programming a la carte would fundamentally alter the environment for new and diverse cable networks like ours. New networks' chances of success in an a la carte world would be severely limited because of their inability to gain commitments for distribution. It's not just networks still on the launch pad that would lose. More recently-launched networks are still building brand recognition and a loyal audience and they would lose as well. Placement is critical to a network's ability to attract "reach and frequency" of viewers, which Mr. Gerbrandt points out are the fundamental tenets of television advertising. "Reach" refers to the ability of a commercial to reach as many viewers as possible. Placement on a basic tier helps to maximize this important aspect of advertisers. A la carte also eliminates the ability to grow and prosper by attracting viewers through channel surfing, which is the way many people decide what networks or programs to watch. It would shrink the audience base for newly launched networks and networks intended for minority tastes, seriously eroding the advertising base needed to sustain programming efforts. In addition, networks would be forced to divert scarce resources away from programming in order to market their "brand" to individual customers. The risks of this unstable environment would simply make many channels an unattractive investment at best and not viable at worst. And the diversity that is the promise of cable television would be most at risk.

As Mr. Gerbrandt concludes:

Because a la carte offerings prevent viewers from sampling (since they may not have chosen them in the first place) a niche or minority programming voice would simply never be heard. These networks would not achieve the critical mass needed to generate reliable ratings, which means their advertising base would be negatively impacted. Programming budgets would have to be diverted to consumer marketing, resulting in lower quality of programs – if the networks are able to survive economically at all. Access to the capital markets – difficult even in the best of times – would become prohibitive. From a niche or minority-targeted network's perspective, there are no benefits, no silver linings and few alternatives should a la carte legislation be enacted.

America is an open society in which we share ideas, thoughts, cultures and politics. Throughout the years television has allowed us to do just that. A la carte would lead to less choice and dwindling programming options. It would have a chilling effect on programming diversity as citizens would have the “right” to segregate themselves and their intellect. While that is not the intention of the legislation it may well turn out to be the results.

Respectfully submitted,

**/s/ Johnathan Rodgers**

Johnathan Rodgers  
President/CEO  
TV One  
1010 Wayne Avenue, 10<sup>th</sup> Floor  
Silver Spring, MD 20910  
(301) 755-2820

July 15, 2004

Attachments

## DECLARATION OF LARRY D. GERBRANDT

I, LARRY D. GERBRANDT, declare as follows:

1. Between June 1984 and March 2004, I was a senior analyst with Kagan World Media. In addition, for the last three years of my tenure with Kagan, I also served as chief operating officer responsible for all Kagan research, consulting and operations. Since March 2004, I have served as an independent media analyst and as a senior consultant to Kagan Media Appraisals. While at Kagan, I created the *Economics of Basic Cable Networks* annual report, which is the definitive database on the financial health and economic indicators of the cable programming sector.
2. I currently am consulting with several startup cable networks which are in the early stages of funding and developing their business plans and models. I hold a Bachelor of Arts degree in Business Administration from Regis University (formerly Loretto Heights College). I have testified as an expert witness on issues related to cable programming on several occasions before the Library of Congress' Copyright Arbitration Royalty Panel. In addition, I have testified as an expert witness in multiple instances before the Courts in matters related to the value of cable programming networks and on standards and practices in the cable television, television advertising and television programming industries.

### **CABLE NETWORK LAUNCH CHALLENGES & STRATEGIES**

3. The basic cable programming industry is one of the most dynamic and entrepreneurial sectors of the American media. Despite the launch of over 300 channels of programming in the last 30 years, the cable and satellite industries continue to receive proposals for dozens of new and innovative networks and programming concepts each year. As many of the “obvious” categories of programming are already occupied by well-entrenched competitors,

these newcomers typically seek to reach underserved audiences, defined either in terms of special interests (a recent example is The Tennis Channel) or ethnicity (a recent example is TV One). In some instances, it has even allowed for competition to develop between networks seeking to attract the same targeted audience, with the viewer benefiting from improved programming and more viewing options.

4. The goal of niche and minority-oriented channels is to reach viewers underserved by mainstream broadcasters and cable networks, which generally offer programming geared for the widest audiences—and therefore appealing to ethnic majorities. There is nothing inherently wrong with wide-appeal programming. It is just that in an effort to reach the widest audiences it often does so at the expense of ethnic, religious or viewers with specific interests.
5. Launching any new network is a daunting financial and strategic undertaking, requiring not only the ability to attract experienced network executives, create successful and high-quality programming of interest to its target audience and—most important—get distribution by cable and satellite operators. Launching a niche or minority-targeted network is even more difficult because it must create large amounts of original programming specifically geared to its audience. As opposed to mainstream networks (such as USA and fx) which can access Hollywood's vaults for movies and off-network series, niche and minority-targeted networks can rarely find suitable "off the shelf" programs. The history of television tells us that most new TV shows fail most of the time. Therefore it can take many years for a new network to create a breakthrough or signature show upon which they can create word-of-mouth and gain mainstream attention (a recent example of the dynamism created by such a show is "Queer

Eye for the Straight Guy,” which brought Bravo – a cable network in existence since December 1980 – into mainstream viewer awareness).

#### **UNIQUE CHALLENGES FOR NICHE & MINORITY NETWORKS**

6. The typical business model for any new network is based on a number of expectations regarding distribution, license fees, advertising revenues, programming costs, marketing and other administrative expenses. Each of these components plays an important role in allowing a network to ascertain if it can attract the necessary capital to begin operations. Not all cable networks are successful and the higher the risk, the greater the premium required by capital markets. New networks must attract the necessary capital in order to launch a service. The ability of niche and minority-targeted networks to attract capital may be more limited than other networks that are attempting to attract wider audiences.
7. It is important to note that most niche and minority-targeted networks are started by independent entrepreneurs. As opposed to a new network launched (or as in the case of Spike TV, relaunched) by one of major cable programming families (examples are MTV Networks, Discovery Networks, NBC/Universal, Disney/ABC and News Corp./Fox), which can leverage off substantial existing infrastructure in affiliate relations, advertising sales and research, an entrepreneurial startup must create its own equivalent infrastructure without any “corporate” assistance. In the case of an independent startup, it must bear the expense of an executive team, support staff, programming acquisitions, production and scheduling group, studio and production facility operations, affiliate relations staff, ad sales staff, research staff, and marketing and public relations team. Indeed, an independent network operates at a significant disadvantage to the major programming entities which can share many infrastructure assets and services across multiple networks. Operating costs in the early years—not including programming expenses—can easily run \$10 million-\$15 million a year

for a standalone cable network, and these costs must be incurred irrespective of revenue levels.

#### **FINANCIAL REALITIES OF NETWORK STARTUPS**

8. A new network typically does not launch until it can gain commitments from cable and satellite operators to launch in at least 10 million homes within the first two years. The typical startup network's business plan is to reach a minimum of 30 million potential households within the first 3-5 years of launch in order to attract sufficient advertising dollars to make up for the fact that during the early years of a new network's existence it gets minimal (if any) affiliate license fees. It can require, for an independent start-up, \$85 million-\$150 million to launch a new network (there have been instances where the cost to launch a stand-alone has exceeded \$200 million) and most networks, even in the best cases, do not hit positive cash flow (where revenues from ad sales and license fees are sufficient to cover operating, programming, distribution and marketing expenditures) for at least three to five years. The Tennis Channel, for instance, had to raise \$30 million in initial capital and reportedly raised over \$100 million before its formal launch. Indeed, in discussions with cable MSO executives, among the primary criteria they say they scrutinize is a new network's financial resources; for obvious reasons, most are reluctant to launch a channel unless it has already obtained enough funding to see it through cash flow breakeven. The key to success is to gain adequate distribution (the three most important things for any new network are "carriage, carriage and carriage"). Without the ability to hit distribution benchmarks a network cannot gain viewers, which means lower advertising revenue, which, as has been noted, is often the primary source of revenue for a startup.

## **CABLE NETWORK DISTRIBUTION ISSUES**

9. The largest broadcast networks now reach some 110 million U.S. television households. The largest cable networks reach more than 85 million multichannel households. Cable operators have spent more than \$85 billion upgrading their cable systems with hybrid fiber coax technology over the last eight years to allow the launch of digital services, including dozens of new 24/7 video channels. In each case cable operators have converted significant amounts of analog spectrum to launch new digital services, since each 6 megahertz of analog spectrum (which can carry a single channel) can deliver multiple digital channels. For practical reasons, very few new channels launch exclusively on the analog tier (which is available to the widest number of basic subscribers). In many cases, cable systems have no more room on their analog tiers of service. New networks instead launch for the most part on digital basic, which is available only to those subscribers who have a digital converter. According the Kagan Research LLC estimates, at the end of 2003 some 23 million cable households (out of 64 million basic cable homes) were equipped with at least one digital converter.
10. All basic cable networks, and especially startup networks, deal with some harsh realities. Just within the cable sector there are dozens of well established networks with more than 55 million subscribers (therefore reaching more than 50% of all U.S. TV households) competing with the national broadcast networks for national advertising budgets. Even a “digital” network which can get fully distributed on digital cable as well as on the most basic tier of the two largest satellite operators (DIRECTV and DISH) can achieve a maximum of about 45 million households, and in most cases distribution levels are much lower. Today, most startup networks build their business plan on the expectation of reaching 30 million subscribers in 3-5 years.



## **FINANCIAL IMPLICATIONS OF THE COMPETITIVE MARKET**

11. Even with all of this expansion of digital capacity on cable and satellite, there are many more new program initiatives than there are open digital cable and satellite channels available to carry them. This means cable and satellite operators are in the position to negotiate very aggressively with startup channels and are often able to demand multiple years of carriage with zero or minimal license fees (typically under ten cents per subscriber per month). This means the primary potential source of revenue for a startup is advertising revenue. However, advertising revenue only becomes viable (for reasons discussed in more detail below) at somewhere above the 20 million subscriber level. In practice, because of the number of networks competing in the market, advertising does not become a self-sustaining revenue stream—where a combination of advertising and affiliate fees exceeds operating, marketing and programming expenses--until a network reaches 40 million or more households. Therefore, a new niche and minority channel would typically be expected to survive through its first 2-3 years with only minimal advertising revenues and virtually no affiliate license fees, which translates into substantial negative cash flow during the first three to five years. The depth of the initial financial hole—especially for an entrepreneurial startup not affiliated with one of the major programming entities—comes from the fact that it must still operate as a full-time network, acquire and create high quality programming, market intensively to create brand name awareness, gain distribution, and conduct audience research irrespective of the amount of revenue being generated. A network's ability to attract any advertising is in direct proportion to the potential audience for the channel, which in turn is linked to both gaining sufficient distribution and creating signature programming which attracts viewers and creates the “buzz” that make the network desirable to advertisers. Advertisers can choose from more than 50 basic networks with carriage in more than 50 million households.

This means a new network not only competes for distribution with several dozen networks still looking for additional carriage, but also competes for viewers with over 300 other channels and must fight for a seat at the advertising table with dozens of much larger, established and successful competitors. For example, according to Kagan Research LLC, TV One's business model is based on substantial losses during the first five years. Kagan projects that TV One will only have *de minimis* license fee revenue and advertising revenues during the network's early years but that advertising revenues are projected to grow from 1 cent per subscriber per month in 2003 (based on potential 8 million subscribers) to nearly 8 cents per subscriber per month in 2008 (based on 39.4 million subscribers).<sup>1</sup>

#### **RATINGS CHALLENGES FOR STARTUPS**

12. As noted above, most newly-launched niche and minority-oriented programmers receive minimal affiliate fee support from cable operators. This makes them highly dependent on advertising, and their ability to attract sponsors who are interested in reaching targeted or special interest audiences or advertisers who may consider these networks because of their generally low cost-per-thousand advertising rates.
13. At the same time, advertisers base the majority of their buying decisions on ratings. Nielsen Media Research is the sole source of ratings domestically. It compiles its data through a combination of meters (around 5,000 hooked to a demographically balanced sample nationwide) and diaries periodically filled out by viewers. As a statistical sample designed to represent the viewing habits of some 110 million U.S. television households, its accuracy or margin of error increases for networks that only reach a smaller percentage of all households. While it is possible for a network to get ratings indications with as few as 10 million-15

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<sup>1</sup> Kagan Research LLC, *Cable Program Investor*, January 31, 2004 at 2.

million subscribers, this means that it will be based (assuming a perfect demographic distribution) on as few as 500 meters, or a 10% subset of the total Nielsen meter sample group. The more distribution a network receives, the greater the reliability and accuracy of the Nielsen audience measurement system. Conversely, emerging networks are often launched in a rolling manner market-by-market across the country, and it may take several years before they gain carriage in the major TV markets in which most of the Nielsen meters are concentrated.

14. Advertisers, their agencies, and the media planners (the individuals at the agencies who create the actual media buying plans and schedules and allocate ad budgets) therefore favor networks with more distribution. In practical terms, networks with carriage in fewer than 30 million TV households have significantly more difficulty in getting a proportional share of media plans, and the ads they do sell are sold at a significant discount to the rates charged by their larger and more widely distributed brethren. **Indeed, many advertisers have told TV One to come see them only after they have 20 million subscribers.** The fundamental tenets of television advertising are “*reach and frequency*.” The “reach” half of the equation is the ability of a commercial unit to reach as many viewers as possible. Not only does this help explain how the major broadcast networks have been able to maintain their ad base despite losing half of their viewing share to cable over the last 20 years, it also explains why larger cable networks are able to charge a premium over the smaller networks. For time-critical commercials—promoting, for instance, the premiere of a new motion picture or the introduction of a new national brand—“reach” becomes a very important criteria and one for which advertisers may pay a premium; they may choose to largely ignore alternatives with less than national distribution. Networks which do not have sufficient distribution to have

meaningful Nielsen ratings are relegated to carrying large amounts of direct response ads (such as pitches for music clubs) and infomercials. The difference in spot rates between a network with less than 20 million subscribers and one with more than 30 million subscribers can be as much as a 2x-3x factor. In other words, a network with less than 20 million subs may have to wholesale its ad inventory at an effective cost-per-thousand (CPM) viewer rate as low as \$2-\$3 per 1,000, whereas a network with more than 30 million subscribers (and especially one in the 40 million subscriber range and above) may be able to charge CPMs in the \$5 to \$10 per 1,000-viewer range.

#### **THE IMPORTANCE OF WIDE DISTRIBUTION AND SAMPLING**

15. While niche and minority-targeted networks may carry programming that is designed to appeal to specific audiences, they are utterly dependent on being available and accessible to the widest possible group of viewers. These networks, like many other well distributed cable networks, depend on being “found” by casual channel surfers or by word-of-mouth recommendations from other viewers who have become regular viewers. This form of “viral marketing” is the primary form of marketing relied on by startup and established cable networks.

#### **STARTUPS DO NOT HAVE RESOURCES TO MARKET IN AN A LA CARTE ENVIRONMENT**

16. New cable networks, like most basic cable services, do not budget significant resources to gain brand recognition. If niche and minority-targeted cable channels were required to market their service directly to consumers (rather than to cable operator and DBS providers), they could easily face marketing expenses comparable to that of a premium cable network, which may spend in excess of a hundred million dollars a year. These niche and start-up networks are the very networks that can least afford to make these kinds of expenditures in their vulnerable early years. That kind of marketing requires the dissemination of much

more information specifically directed to each viewer with much more frequency. Cable operators gain substantial marketing budget efficiencies by marketing bundles or packages of multiple networks. If they are forced to market on an a la carte basis, by economic necessity the majority of marketing funds will be allocated to the channels which are likely to be of interest to the majority of subscribers—at the expense of niche and minority-targeted offerings.

17. Today, the few truly a la carte offerings—premium services such as HBO, Showtime and Starz—do not depend on cable or satellite operators to market their services. Instead, these services in aggregate spend hundreds of millions of dollars each year to keep subscribers informed of the unique nature of their program offerings and sell their value proposition directly to the end-user. No niche or minority-oriented channel is financially able to mount the kind of massive, long-term, national advertising and marketing campaigns.
18. It is clear that startup, niche and minority-targeted networks will suffer the greatest harm from any move to a la carte offerings by lowering their distribution (and thus potential audience) thereby damaging their ability to exploit their primary revenue stream: advertising sales. A la carte would also cause dramatic increases in marketing expenses.

#### **THE NEGATIVE IMPACT OF A LA CARTE ON A STARTUP'S ABILITY TO RAISE CAPITAL**

19. The financial backers of these networks will also be negatively impacted and it will become much more difficult—if it is possible at all—for these networks to raise additional rounds of capital. For networks that are already launched, a la carte will greatly extend the time horizon to breakeven; and for those already profitable, it will dramatically lower the upside opportunity. For startup networks and those which are in the pre-launch phase, a la carte introduces an unacceptable level of risk for virtually any financial backer of a niche, minority

or startup network and sources of capital—which are already harder for this category of network to raise—will virtually disappear.

20. Over the last 30 years, most of the programming concepts with the widest obvious appeal (such as news, weather, sports, drama, music, children's, teens, etc.) have already been launched and have generally achieved wide distribution. While these incumbents are very likely to be also significantly harmed by the introduction of a la carte, they have already been able to achieve a modicum of name brand recognition, an attribute not enjoyed by startups and more niche networks.
21. In effect, a la carte would turn every basic network into the equivalent of a pay TV channel. It is highly likely subscribers will wind up paying the same amount of money (or more) each month for far fewer channels (of potentially lesser quality) than they currently receive. It is highly unlikely any startup or emerging basic network could survive being converted into what would be, in effect, a mini-pay channel.
22. Because a la carte offerings prevent viewers from sampling (since they may not have chosen them in the first place) a niche or minority programming voice would simply never be heard. These networks would not achieve the critical mass needed to generate reliable ratings, which means their advertising base would be negatively impacted. Programming budgets would have to be diverted to consumer marketing, resulting in lower quality of programs—if the networks are able to survive economically at all. Access to the capital markets—difficult even in the best of times—would become prohibitive. From a niche or minority-targeted network's perspective, there are no benefits, no silver linings and few alternatives should a la carte legislation be enacted.

## CONCLUSION: THE OVERALL IMPACT OF A LA CARTE

23. Any implementation of legislation or regulation that would force the break-up of packages or tiers of service to individual “a la carte” offerings would be particularly damaging—indeed potentially economically and strategically fatal—to niche-oriented and minority-focused cable program networks. While on the surface, it might appear that the very nature of these networks—the fact that they are designed for highly targeted or specific audiences—would make them logical candidates for a la carte sales. On the contrary, the manner in which television viewers “surf” channel lineups and on-screen guides, the way in which cable services are marketed by cable and DBS providers, and the way in which advertisers allocate media budgets militates *against* niche and minority-targeted networks being sold on an a la carte basis. A la carte legislation and regulation would silence many of the very voices of diversity and unique interest which are heard only because of cable and satellite’s flexible packaging and tiering offerings.
24. If a la carte offerings are mandated, many networks are likely to see their distribution decline, with concomitant declines in advertising sales. The same will hold true for niche and minority-oriented networks but the damage to them will be even more extreme, since these networks are by their nature already smaller than their broad-based counterparts and a la carte offerings could cause them to fall below the threshold advertisers consider necessary for inclusion in most national media plans. For startup networks, a la carte means the possibility of never reaching the threshold necessary to be of significant interest to national mainstream advertisers (who already can choose from dozens of networks with wider distribution). Forced a la carte means that diversity in terms of program choice will be negatively impacted and the range of ethnic, religious and affinity group voices that should

be part of the viewing cornucopia could rapidly disappear—or never get a chance to be heard in the first place.

25. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in cursive script, appearing to read "Larry D. Gerbrandt", is written over a horizontal line.

Larry D. Gerbrandt

Dated: July 13, 2004



## CURRICULUM VITAE

### LARRY D. GERBRANDT

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**AlixPartners**, Los Angeles, CA 2004-Present

*Senior Associate*

Joined firm in July 2004 to build AlixPartners' media and entertainment practice. Headquartered in Southfield, MI, AlixPartners is a leader in providing financial advisory services, including litigation support, consulting, valuation and restructuring to a wide range of industries.

**Kagan World Media**, a Primedia company. Carmel, CA 1984-2004

*Chief Operating Officer/Senior Analyst*

Joined firm in 1984 as associate editor and was promoted to analyst in 1985. Became vice president, with added corporate responsibilities, in 1988. Promoted to senior vice president in 1992 and was responsible for Kagan's entertainment and programming research operations and oversaw a team of analysts covering the cable and broadcast network programming, DBS, TV syndication, home video, motion picture, pay TV and Internet industries in 1992. Named chief operating officer, responsible for all Kagan content, publishing, research, appraisal and consulting operations, in February 2001. Kagan was acquired by Primedia Corp. in October 2000 and then merged into the Media Central LLC joint venture between Primedia and Steven Brill in February 2001. Media Central was dissolved in May 2003 and Kagan was sold to MCG Capital in March 2004.

Over a span of two decades, helped build Kagan into one of the leading media and entertainment research firms, with a client base of over 5,000 individuals and firms.

Served as senior analyst and contributor to more than 20 different newsletters, including *CONSUMER MEDIA TECHNOLOGY*, *HOME SHOPPING INVESTOR*, *INTERNET ADVERTISING*, *CABLE PROGRAM INVESTOR*, *STREAMING MEDIA INVESTOR*, *VOD INVESTOR*, *THE PAY TV NEWSLETTER*, *CABLE TV ADVERTISING*, *MOTION PICTURE INVESTOR*, *DIGITAL TELEVISION*, *MARKETING NEW MEDIA*, *CABLE TV TECHNOLOGY*, *ELECTRONIC PUBLISHER*, *THE DBS REPORT*, *INTERNET MEDIA INVESTOR*, *TV PROGRAM INVESTOR*, *TV PROGRAM STATS*, *MOVIESTATS*, *CABLE TV INVESTOR* and *KAGAN MEDIA MONEY*.

Also authored or contributed to numerous special reports on entertainment topics, including *THE CONNECTED HOUSEHOLD*, *MEDIACAST 2006/2007/2008*, *THE PAY-PER-VIEW REPORT*, *THE CHANNEL CAPACITY REPORT*, *THE CABLE INTERCONNECT REPORT*, *THE CABLE ADVERTISING REPORT*, *KAGAN MEDIA TRENDS*, *THE STATE OF HOME VIDEO*, *THE STATE OF DBS*, *HOME SHOPPING*, *ECONOMICS OF BASIC CABLE NETWORKS* (1995, 1996, 1997, 1998, 2000), *CHANNEL COMPRESSION: A STRATEGIC ANALYSIS*, *CABLE MODEMS: A STRATEGIC ANALYSIS*. Also had corporate oversight responsibilities for PKA's investment in two leading cable trade publications, *Cable World* and *Cable Avails*, which were sold in January 1994 to Cowles Media. As senior entertainment analyst, also moderates numerous Kagan Seminars, Inc. conferences, including *The Digital Household Summit*, *The Future of Pay-Per-View*, *Motion Picture Production & Finance*, *TV Program Finance*, *Interactive Multimedia Forum*, *Video-On-Demand*, *High Speed Access Summit*, as well as conferences dealing with home shopping and streaming media. Wrote a monthly column "Letter From America" for *Kagan's Euromedia* magazine from 1999-2002.

Also served as senior consultant to **KAGAN MEDIA APPRAISALS** which engaged in consulting, expert witness and valuation assignments and has performed appraisals of media assets aggregating to more than \$85 billion. Acted as consultant on many of KMA's entertainment and programming-related assignments and has been responsible for fair market value appraisals of numerous movie libraries, totaling in excess of 4,000 titles, including being designated as Disney's expert witness in the *Katzenberg v. Disney* case. Other valuation assignments included numerous cable networks, movie theater chains and TV libraries. Strategic consulting assignments include assessments of market opportunities in the motion picture, home video, cable programming, pay-per-view, home shopping and TV syndication sectors, both in the U.S. and international markets.

**CURRICULUM VITAE**

**Larry Gerbrandt**

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**ORION CABLE SYSTEMS, INC.** Denver, CO 1982-1984

*Operations Manager*

Managed 15 private cable/SMATV systems with over 2,000 subscribers operating along the front range of Colorado for this division of Orion Broadcast Group (a startup media company which went public in 1983). Was responsible for all phases of system operations, including franchise negotiations, construction, marketing, programming and billing. Left the company after overseeing the successful sale of division operations to another SMATV firm.

**BRIMSTONE FILMS** Dallas, TX 1978-1982

*Producer*

As one of the founders of Brim, Stone, Gerbrandt & Guetzlaff, Inc. (dba Brimstone Films) in 1978, acted as line producer on dozens of TV commercials, award-winning industrial films and museum documentaries. Clients included Tandy Corp. (Radio Shack), Dr Pepper, Pizza Hut, Precision Tune, Neiman-Marcus, Texas Sports Hall of Fame and the East Texas Oil Museum. After completing a one-hour TV special on the Hemingway family, sold interest in company to an outside investor.

**THE NATIONAL COURIER** Plainfield, NJ 1976-1977

*Freelance Photojournalist*

A regular contributing photographer and reporter for this national weekly newspaper, launched by Logos Publishing in 1976.

**CHRIST FOR THE NATIONS, INC.** Dallas, TX 1974-1978

*Managing Editor*

Was responsible for all publishing at this non-denominational missionary organization and Bible institute, including a monthly magazine with a circulation of 144,000 and a book catalog of over 200 titles. Also served as part-time photography instructor at the CFN Institute.

**EDUCATION:**

Alameda Senior High School, Lakewood, CO. Graduated in 1970

Colorado State University, Ft. Collins, CO. Major: Plant Pathology 1970-1972

Metropolitan State College, Denver, CO Major: Journalism 1972-1973

Regis University (formerly Loretto Heights College), Denver, CO 1984-1985

Received Bachelor of Arts degree in Business Administration in 1985.

**DEPOSITION HISTORY:**

Bella Abzug, et al v. Kirk Kerkorian/MGM/UA  
SelecTV v. Amway  
Vestron v. Security Pacific  
Rafelson, et al. v. Columbia Pictures Industries  
Recreation Broadcasting, Inc. and KTV, Inc. v. United Cable TV of Colo. et al  
Persky-Bright v. Columbia Pictures  
Mainline Pictures v. Kim Basinger  
T. Rex Productions v. Whoopi Goldberg  
MTA/Persik v. MGM/UA Pictures, et al  
Simon Marketing, Inc. v. Promotional Concept Group  
Credit Lyonnais v. Houlihan, Loki, et al  
Michael DeWoody, et al v. Hopkins & Sutter  
Syufy Enterprises v. State of California  
Filerman, et al vs. Fox Broadcasting Co.  
Wherehouse Video bankruptcy reorganization (December 1997, Delaware)  
Schonfeld v. Hilliard (December 1997)  
Katzenberg v. Disney (March 1999)  
USA v. ASCAP (Civil Action #13095, Southern District Court of New York, rate proceeding) (August 1999)  
Leonard Ross vs. @Radical, Levi Strauss, Foote, Cone & Belding and David LaChapelle (Sep. 1999)  
County of Alameda v. St. Michael Investments, et.al  
USA v. ASCAP (rebuttal) (February 2000)  
Ticketmaster v. N2K (June 2000)  
Lipson v. New Frontier Media (July 2000)  
Belo Holdings, Inc. and PJ Health Programming, Inc. v. AHN Holdings, Inc. and Columbia/HCA Healthcare  
Wex vs. TVN (February 2001)  
Bochco vs. Fox (March 2001)  
Furtherfield Partners, L.P. v. Perelman, et al. (Panavision) (January 2002)  
Echostar v. TV Azteca (2003)  
Ivy Street Productions v. Sony Pictures, Columbia, et al. (2003)  
Blatty/Friedkin v. Warner Bros (2003)  
Modi v. ESPN (December 2003)  
Logix v. Emerald Entertainment (January 2004)  
Krikorian v. Westminster (April 2004)

**COURT/ARBITRATION TESTIMONY , AFFIDAVITS & DECLARATIONS::**

New Visions Productions vs. Cineplex Odeon (AAA proceeding in Los Angeles)  
Sonic Cable vs. CableAd Image (San Luis Obispo, CA)  
Recreation Broadcasting, Inc. and KTV, Inc. vs. United Cable TV of Colo. et al (Denver, CO)  
Litchfield Theatres, Ltd. bankruptcy court hearing (Charlotte, NC)  
Internal Revenue Service vs. Marian B. estate (RKO library rights, Tax Court, Washington, DC)  
Joseph Murana et al vs. Bank of Montreal and Peat Marwick Thorne (Canada)  
Michael DeWoody, et al v. Hopkins & Sutter (Ft. Worth, TX)  
Syufy Enterprises v. State of California  
MCA v. Viacom (affidavit filed, New York)  
Singer v. Danson (affidavit filed, Los Angeles)  
Copyright Arbitration Royalty Proceedings, Copyright Office, Library of Congress, December 1994  
Digital Performance Right In Sound Proceedings, Copyright Office, Library of Congress, September 1996  
Satellite Arbitration Royalty Proceedings, Copyright Office, Library of Congress, March 1997  
Sheldon, et al v. Columbia Pictures, Inc. et al (California Superior Court, January 1998)  
LANS v. Reuters (declaration, Los Angeles)  
Bohco v. Fox (declaration, Los Angeles)  
Ticketmaster vs. N2K (California Superior Court, October 2000)  
Fox Family Properties, Inc. v. CBS, Inc; Touchstone TV; Jerry Bruckheimer; CAA (declaration, LA)  
Wex vs. TVN (February 2001)  
PJ Health Programming, Inc. v. AHN Holdings, Inc. and Columbia/HCA Healthcare (Dallas, Aug. 2001)  
Click vs. Trimark (AAA proceeding in Los Angeles, November 2001)  
Echostar v. TV Azteca  
Modi v. ESPN (December 2003)  
Ivy Street Productions v. Sony Pictures, Columbia, et al. (2003)

## **CURRICULUM VITAE**

**Larry Gerbrandt**

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### **INDUSTRY CONFERENCES:**

1996 CTAM PPV Conference, Orlando, FL--Keynote presentation  
1997 CTAM PPV Conference, Atlanta, GA--Keynote presentation  
1997 USC Entertainment Law Institute, Los Angeles, CA--Keynote presentation  
1998 North American Broadcasters Association (NAMBA)--Panel presentation  
1999 NATPE, New Orleans--Panel presentation  
1999 CTAM Digital Conference, New Orleans--Keynote presentation  
1999 Women In Cable National Leadership Conference, San Francisco--"Programming 101" seminar  
1999 Streaming Media West--Roundtable discussion  
2000 CTAM Digital & PPV Conference--Los Angeles--Keynote presentation  
2000 Streaming Media East--Panel presentation  
2000 Yack Program Partners--Moderated panel  
2000 TiVo Advertising Partners--Panelist  
2000 Streaming Media West--Panelist  
2001 Accenture Media & Entertainment Partners Conference--Keynote presentation  
2001 Streaming Media West--Moderator  
2001 National Association Broadcasters--Moderated New Media track sessions  
2001 CTAM Pre-Western Show Panel--Moderator  
2002 OSTA--Panelist  
2003 Consumer Electronics Show--Panelist  
2003 OSTA--Panelist  
2004 Digital Hollywood--Moderator  
2004 Digital Media--Panelist  
2004 BCFM--Moderator and Panelist  
2004 adTech--Panelist

### **MEDIA:**

Interviewed on FNN, CNN, *Good Morning, America*  
ABC Evening News, 4/24/97  
ABC Evening News, 5/26/97  
Pundits Panel, The Cable Channel, 1997/1998/1999/2000 Western Show and National Show  
Silicon Spin show on ZDTV cable network, May 1999  
PBS Frontline, 11/22/01  
Extensively quoted in *Wall Street Journal*, *New York Times*, *The Los Angeles times*, *The Atlanta Journal-Constitution*, *The Philadelphia Enquirer*, *The Denver Post*, *USA Today*, *Newsweek*, *Time Magazine*, *The Washington Post*, *Forbes*, *Daily Variety*, *Hollywood Reporter*, *Cable World*, *Electronic Media*, *Broadcasting & Cable*, *Multichannel News*, *TV Guide*, *San Francisco Chronicle*, *San Jose Mercury News*, *Fortune Magazine*, *Sports Illustrated*.

### **AWARDS & EXHIBITIONS:**

National Science Foundation Summer Fellowship, Clemson University, 1969  
New York International Film Festival (various in 1979-81)  
Underwater Photo Society (1993 & 1995 California Beach Dive Photo Competition)  
Monterey County Fair 1994, 1995, 1996, 1997, 1998 Photography Exhibition (1996 & 1997 1st place awards, Best of Show in 1998)  
Center For Photographic Art 1997, Center Awards, Exhibiting Artist  
Featured in Polaroid's *Test* magazine in 1998 (developed a new technique for creating Polaroid transfers)  
Center For Photographic Art 1999, Center Awards, Exhibiting Artist  
MRCSO 2000 Division IIB Socko Team Champs